

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, *et al.*,

Defendants.

Civil Action No. 1:20-cv-5583-AKH

So ordered. Leave is granted.

Alvin K. Hellerstein /s/
July 29, 2020

**CONSENT MOTION FOR LEAVE TO SERVE
COMPLAINT AND SUMMONSES BY EMAIL**

Plaintiffs the State of New York, *et al.* (“Plaintiffs”) respectfully move the Court for leave to serve the Complaint [ECF No. 1] and summonses in this action on Defendants U.S. Department of Health and Human Services (“HHS”), Alex M. Azar II, in his official capacity as Secretary of HHS, and Roger Severino, in his official capacity as Director of HHS’s Office for Civil Rights (“Defendants”), by email. In support of this motion, Plaintiffs state the following:

1. Plaintiffs filed the Complaint on July 20, 2020.
2. Rule 4(i) of the Federal Rules of Civil Procedure requires Plaintiffs to serve a copy of the summons and complaint by registered or certified mail to the Attorney General, the United States Attorney for the Southern District of New York, and Defendants. *See Fed. R. Civ. P. 4(i)(1), 4(i)(2).*
3. The waiver-of-service provisions in Rule 4 do not apply to service on a federal government defendant. Fed. R. Civ. P. 4(d).
4. Due to ongoing office closures and other restrictions arising from the COVID-19 pandemic, as well as operative guidance on social distancing by the Centers for Disease Control

and Prevention, Plaintiffs ask the Court to grant leave to treat service of the summons and complaint by email as effective service on Defendants for purposes of complying with Rule 4(i).

5. Under Rule 4(l), the undersigned affirms that, on July 22, 2020, the undersigned transmitted the complaint, civil cover sheet, and executed summonses by email to Defendants' counsel.

6. Plaintiffs conferred with Defendants' counsel before filing this motion, who advised that Defendants consent to service by email.

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion.

Dated: July 28, 2020

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

Matthew Colangelo
Chief Counsel for Federal Initiatives

Elena Goldstein
Deputy Chief, Civil Rights Bureau

By: /s/ Joseph J. Wardenski
Joseph J. Wardenski, *Senior Trial Counsel*
Fiona J. Kaye, *Assistant Attorney General*
Travis England, *Assistant Attorney General*
Marissa Lieberman-Klein, *Special Assistant Attorney General**
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
(212) 416-8441
Joseph.Wardenski@ag.ny.gov

Attorneys for the State of New York

* Application for admission to SDNY forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2020, I filed and served on all counsel of record the foregoing Motion for Leave to Serve Complaint and Summons using the Court's CM/ECF system, and served a copy of the motion by email on the following counsel for Defendants:

Jeffrey Oestericher
Chief, Civil Division
U.S. Attorney's Office, SDNY
86 Chambers Street, 3rd Floor
New York, NY 10007
Jeffrey.Oestericher@usdoj.gov

/s/ Joseph J. Wardenski

Joseph J. Wardenski